

REMARKS

Claims 1-10 are pending.

Claim 1 has been amended herewith. Applicant submits no new matter has been added by way of this amendment.

Claim 1 stands rejected under 35 U.S.C. § 112, second paragraph. Applicant submits this rejection has now been rendered moot by way of the instant amendment, and requests withdrawal of same.

Claims 1, 3, 4, and 6 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent 5,140,845 to Robbins in view of "Chemical Principals" to Masterton *et al.* and "Compilation of Air Pollutant Emission Factors, AP-42" to the Environmental Protection Agency (EPA). Applicant respectfully traverses this rejection and requests withdrawal of same.

Claim 2 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Robbins in view of the teachings of Masterton *et al.* and Method AP-42 as applied to claim 1 and further in view of U.S. Patent No. 5,809,664 to Legros *et al.*

Claim 5 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Robbins in view of the teachings of Masterton *et al.* and Method AP-42 as applied to claim 1 and further in view of U.S. Patent No. 5,522,271 to Turiff *et al.* or Method 5035 to the EPA.

Claim 7 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Robbins in view of the teachings of Masterton *et al.* and Method AP-42 as applied to claim 1 and further in view of "Determination of Volatile Organic Solvents in Water by Headspace Sampling with the 8200 CX Autosampler" to Penton.

Claims 8-10 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Robbins in view of the teachings of Method AP-42, Method 5035, "Manual for the Certification of Laboratories Analyzing Drinking Water- EPA 815-B-97-001 to the APA, and U.S. Patent No. 4,930,906 to Hemphill.

Rejections Under 35 U.S.C. § 103(a)

Claims 1, 3, 4, and 6 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent 5,140,845 to Robbins in view of "Chemical Principals" to Masterton *et al.* and "Compilation of Air Pollutant Emission Factors, AP-42" to the Environmental Protection Agency (EPA). Applicant respectfully traverses this rejection and requests withdrawal of same. Applicant respectfully traverses the rejection and requests withdrawal of same.

Applicant's invention teaches a method for measuring volatile organic compounds (VOCs) of material produced in a process system having emissions. Examples of process systems in which this method may be utilized are provided in Applicant's specification at least on page 4, and include spray dryers, mixers, fluid bed dryers and coolers, and storage tanks. All of these systems are closed systems, and as such have dynamic air flow properties. Applicant maintains that Applicant's claims must be read in light of the specification.

Robbins teaches a method for measuring the volatile constituent of a **sample of ground water or soil mixed with water**. The systems described in Robbins are open systems, or in other words, systems open to the atmosphere, not the closed systems of Applicant's invention. In addition, the method of Robbins requires agitation of the bag and contents to release the sample. Applicant's invention does not require agitation. Further, Robbins does not teach or suggest a method for measuring volatile organic compounds in a **process system having emissions**, as provided by way of Applicant's invention. Specifically, the leakage of underground storage tanks and the testing of the contaminated soil resulting therefrom as described in Robbins is an open system, and does not teach or suggest the measurement of VOCs in the closed systems of Applicant's invention. Robbins therefore does not support the obviousness rejection of Applicant's invention.

"Chemical Principals" to Masterton, Slowinski, and Stanitski is a general chemistry text. This textbook does not teach or suggest the method for measuring volatile organic compounds of Applicant's invention as claimed.

"Compilation of Air Pollutant Emission Factors, AP-42" to the Environmental Protection Agency (EPA) is a general fact sheet for the EPA on techniques used in

studying air pollution. This fact sheet does not teach or suggest the method for measuring volatile organic compounds of Applicant's invention as claimed.

There is no teaching or suggestion of a method for measuring volatile organic compounds (VOCs) of material produced in a process system having emissions as provided by way of Applicant's invention in any of these references. Specifically, Robbins fails to teach or suggest Applicant's invention at least for the reasons discussed above. Further, Applicant fails to see how the addition of a general chemistry textbook and the generic EPA protocols into the body of this rejection provide any support to the veracity of the Examiner's position this matter.

Still further, there is no teaching or suggestion in any of these references to combine same. Applicant maintains the Examiner has engaged in impermissible hindsight reconstruction of Applicant's invention. Effectively, the Examiner has used Applicant's invention as a shopping list in order to attempt to locate these various references in this attempt to negate the patentability of Applicant's invention as claimed. Applicant respectfully requests withdrawal of the rejection.

Claim 2 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Robbins in view of the teachings of Masterton *et al.* and Method AP-42 as applied to claim 1 and further in view of U.S. Patent No. 5,809,664 to Legros *et al.* Applicant respectfully traverses the rejection and requests withdrawal of same.

Applicant's invention teaches a method as described above.

Robbins teaches a method as described above. Robbins does not teach or suggest Applicant's invention as claimed.

"Chemical Principals" to Masterton, Slowinski, and Stanitski is a general chemistry text. This textbook does not teach or suggest the method for measuring volatile organic compounds of Applicant's invention as claimed.

Legros *et al.* teach a drying system for a fluid bed dryer. Legros does not teach a method for measuring volatile organic compounds of material produced in a process system having emissions.

None of these references teach or suggest Applicant's invention as claimed. Further, there is no teaching or suggestion in any of these references to combine same. Applicant requests withdrawal of the rejection.

Claim 5 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Robbins in view of the teachings of Masterton *et al.* and Method AP-42 as applied to claim 1 and further in view of U.S. Patent No. 5,522,271 to Turiff *et al.* or Method 5035 to the EPA. Applicant respectfully traverses the rejection and requests withdrawal of same.

Applicant's invention is as described above.

Robbins is as described above. Robbins does not teach or suggest Applicant's invention as claimed.

"Chemical Principals" to Masterton, Slowinski, and Stanitski is a general chemistry text. This textbook does not teach or suggest the method for measuring volatile organic compounds of Applicant's invention as claimed.

Method AP-42 is a generic text dealing with VOCs and storage tanks.

Turiff *et al.* teach a soil sampling tool. Turiff *et al.* does not teach or suggest the method for measuring VOCs of Applicant's invention as claimed.

Method 5035 is a generic text dealing with testing VOCs in solid materials.

None of these references teach or suggest Applicant's invention as claimed. Further, there is no teaching or suggestion in any of these references to combine same. Applicant requests withdrawal of the rejection.

Claim 7 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Robbins in view of the teachings of Masterton *et al.* and Method AP-42 as applied to claim 1 and further in view of "Determination of Volatile Organic Solvents in Water by Headspace Sampling with the 8200 CX Autosampler" to Penton. Applicant respectfully traverses the rejection and requests withdrawal of same.

Applicant's invention is as described above.

Robbins is as described above. Robbins does not teach or suggest Applicant's invention as claimed.

"Chemical Principals" to Masterton, Slowinski, and Stanitski is a general chemistry text. This textbook does not teach or suggest the method for measuring volatile organic compounds of Applicant's invention as claimed.

Method AP-42 is a generic text dealing with VOCs and storage tanks.

"Determination of Volatile Organic Solvents in Water by Headspace Sampling with the 8200 CX Autosampler" to Penton is a generic guide for water sampling.

None of these references teach or suggest Applicant's invention as claimed. Further, there is no teaching or suggestion in any of these references to combine same. Applicant requests withdrawal of the rejection.

Claims 8-10 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Robbins in view of the teachings of Method AP-42, Method 5035, "Manual for the Certification of Laboratories Analyzing Drinking Water- EPA 815-B-97-001 to the APA, and U.S. Patent No. 4,930,906 to Hemphill. Applicant respectfully traverses the rejection and requests withdrawal of same.

Applicant's invention teaches a kit for measuring volatile organic compounds (VOCs) of material produced in a process system having emissions.

Robbins teaches a method as described above. Robbins does not teach or suggest the kit nor the method of Applicant's invention.

Method AP-42, Method 5035, "Manual for the Certification of Laboratories Analyzing Drinking Water- EPA 815-B-97-001 to the EPA all teach general industrial configurations and procedures employed in measuring various compounds. Applicant maintains these generic "how to" manuals do not teach or suggest Applicant's invention as claimed.

Hemphill teaches a cooking grease disposal bag. Hemphill does not teach or suggest a kit for measuring volatile organic compounds produced in a process system having emissions as provided by way of Applicant's invention. Further, Hemphill does not teach or suggest process systems having emissions, nor does Hemphill teach or suggest volatile organic compounds being emitted in any system. Applicant maintains the current rejection of Claims 8-10 over Hemphill is analogous to making an obviousness rejection of Claims 8-10 over any resealable bag. There simply is no

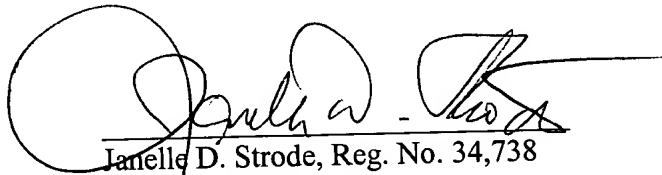
teaching or suggestion in Hemphill of Applicant's kit for measuring VOCs in a system having emissions as claimed.

Further, there is no teaching or suggestion in any of these references to combine same. Applicant maintains the Examiner has engaged in impermissible hindsight reconstruction of Applicant's invention. Effectively, the Examiner has used Applicant's invention as a shopping list in order to attempt to locate references that may have some pertinence in this attempt to negate the patentability of Applicant's invention as claimed. In particular, the use of the Hemphill reference as one of the elements employed in this obviousness rejection is troubling. Hemphill teaches a cooking grease disposable bag. Hemphill does not address the determination of volatile organic compounds in any way, and certainly not in the manner nor using the kit as provided by way of Applicant's invention..

Conclusion

Applicant respectfully requests withdrawal of all rejections of Claims 1-10. Should the Examiner believe that any issues remain outstanding, the Examiner is requested to call Applicant's undersigned attorney in an effort to resolve such issues and advance this application to issue.

Respectfully submitted,
LATHROP & GAGE L.C.

A handwritten signature in black ink, appearing to read "Janelle D. Strode", is written over a horizontal line.

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